IN THE HIGH COURT OF BOMBAY AT GOA

MISC.CIVIL APPLICATION NO. 427 OF 2004

THE SPECIAL LAND ACQUISITION OFFICER AND ANR., ...Applicants

Versus

FRANCISCO BARETTO(SIN.DEC.) THROUGH L.RS., ...Respondent

Ms. W. Coutinho, Government Advocate for the Applicants.

Coram:- R. M. LODHA, J.

Date:- 7th October, 2005

P.C.:

Heard Government Advocate and perused the application for condonation of delay. Pursuant to the Order dated 23rd September, 2005 the applicants have filed two additional affidavits. One affidavit is of Advocate Philomena da Silva, Government Counsel and the other is by the Superintending Engineer J.P. D'Souza.

In his affidavit Advocate Philomena da Silva has admitted that due to her inadvertence the certified copy of the Judgment could not be filed in time. She has stated that in LAC No.41/1993 the Judgment and Award was passed on 12.11.2003 and she proceeded for vacation on the very next day and on her return fell sick.

The Superintending Engineer J.P. D'Souza in his affidavit has stated thus :-

" I say that there is a delay of 117 days in filing the captioned memo of Appeal. I say that I have shown suficient cause for condoning the delay and therefore the delay caused in filing the Appeal may kindly be condoned by the Hon'ble Court.

I say that the Award was passed by the reference Court on 12.11.03 and the certified copy of the Award was applied on 09.3.04 by the then Assistant Engineer-IV, Work Division VI as advised by the Government Advocate who appeared in the said matter. I say that the date given for delivery of certified copy was on 22.3.04. I further say that the certified copy was ready on 16.3.04 and the same was collected on the same date.

I say that the copy was obtained by my office on 16.3.04, the file was thereafter sent to the office of Assistant Engineer who in turn vide report dated 18.3.04 forwarded the file to the office of the Superintending Engineer, Works Division IV, PWD for submitting the file for taking legal opinion of Law Department in the said Appeal.

I say that thereafter the Executive Engineer vide his note dated 08.4.04 marked the file to Superintending Engineer, Fatorda, Margao to obtain the opinion of Law Department and to process a matter accordingly. The file was sent to Chief Engineer-I by Superintending Engineer only on 12.4.04.

I say that the Chief Engineer-I received the file in his office on 15.4.04 and in turn marked the file to Principal Chief Engineer, PWD, which was received in his office on 16.4.04. I say that the Principal Chief Engineer thereafter on the same date forwarded the file for obtaining opinion from the Law Department in the said matter.

I say tht the Law Department (Legal Affairs) received the file on 22.4.04. I further say that the file was cleared by the dealing hand in the Law Department on 30.4.04. I say that thereafter on the same day (30.4.04) the file was marked to Superintendent (Legal) and to Joint Secretary (Legal). I say that the Joint Secretary (Legal) in turn marked te file to Legal Advisor on 5.5.04.

I say that the office of the Legal Advisor disposed off the file on 5.5.04 itself. The LegalADvisor opined that since some Appeals are already filed before the Hon'ble High Court arising from the same notification advised to file the Appeal against the said Award, after obtaining the approval from the Government and marked the file to the Secretary, PWD for taking the said approval.

I say that on 7.5.04 the Secretary, PWD with his opinion forwarded the same for taking approval of the Government for Filing the Appeal. I say

that the Government gave approval on 12.5.2004, and thereafter the file was routed through the office of SEcretary (PWD) through the office of thePrincipalChief Engineer, PWD, on 17.5.2004.

I say that on 25.5.04 the Executive Engineer in turn marked the file to the Head Clerk with remark to send the file by a covering letter to the office of the Learned Advocate General for filing the Appeal.

I say that thereafter on 25.5.04, the Head Clerk put up the file with covering letter dated 26.5.04. I say that the office of the Ld. Advocate General received the file on 27.5.04 and on the very same day Ld. Advocate General marked the file to Adv. H.D. Naik Ld. Additional Government Advocate for filing the Appeal.

I say that the Learned Additional Government Advocate received the file on the very same day. I further say that since this Hon'ble Court was on vacation till 6.6.04, the Appeal could not be filed and the same was filed in this Hon'ble Court only on 7.6.04 i.e. on the day of re-opening of the Court. "

There is no justifiable reason to discard the affidavits of Advocate Philomena da Silva and Superintending Engineer J.P. D'Souza.

The delay is sufficiently explained. Despite service of notice the respondents have not chosen to appear. Thus I am satisfied that the applicants were prevented by sufficient cause in filing the First Appeal in time. Civil Application is, accordingly, granted. Delay in filing First Appeal is condoned. Office to process First Appeal and post it for admission.

Misc. Civil Appliction stands dispensed of.

R. M. LODHA, J.

sl.